Bail Slip

The Petitioner/Accused namely Jayaprakash was directed to be released on bail in and by order of the Court dated 29.11.2000 in Crl.M.P.No.8774/2000 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.1083 of 2000

Jayaprakash .. Appellant/Accused

vs.

State rep by
The Inspector of Police,
Serambadi Police Station,
Otacamund District,
(Crime NO.43/1997) .. Respondent/Complainant

Prayer: This appeal has been preferred against the judgment dated 19.10.2000 made in S.C.No.36/1998 on the file of the Sessions Judge, Otacamund.

For Appellant : Mr.C.R.Malarvannan

For Respondent : Mr. V.R.Balasubramanian,
Additional Public Prosecutor

JUDGMENT

When the matter is taken up for hearing, the learned counsel for the accused/appellant herein represented that the case of the prosecution is that he had assaulted P.W.2 and caused injury, which resulted in a criminal case under Section 307 IPC against the accused and the trial Judge after going through the evidence both oral and documentary has held that the charge under Section 307 IPC against the accused has been proved beyond any reasonable doubt and accordingly convicted the accused and sentenced to undergo 3 years RI, which necessitated the accused to prefer this appeal and that subsequent to the award of punishment by the trial Court against the accused both the accused and the victim P.W.2 have become very

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friendly and P.W.2 has magnanimously come forward to pardon the accused. The learned counsel has also filed a joint memorandum of compromise entered into between P.W.2 and the accused and also an affidavit filed by the accused to the effect that he had entered into a compromise with P.W.2 and that he was in prison for 25 days prior to conviction.

2. The learned counsel Mr.C.R.Malarvannan appearing for the accused/appellant would further submit that taking into consideration the events which had taken place during the pendency of this appeal this Court may give due consideration for the submissions made by the accused and the sentence may be modified to that of a period already undergone even though the offence is not compoundable. In support of his contention the learned counsel Mr.C.R.Malarvannan appearing for the accused/appellant would rely on AIR 1999 SC 895 (Ram Lal and another Vs. State of Jammu and Kashmir), wherein our Honourable Apex Court has held that even though the offence is not compoundable the Court taking into consideration the facts and circumstances and the plight of the parties and taking note of the subsequent events which had occurred during the pendency of the appeal, can modify the sentence. In the above said dictum the accused was convicted under Section 326 of the Penal Code and subsequently had entered into a compromise with the victim and a joint memo was filed before the Court. Under such circumstances, the Honourable Apex Court has observed as follows:-

> "It is apparent that when the decision in Mahesh Chand (AIR 1988 SC 2111) (supra) was rendered attention of the learned Judges was not drawn to the aforesaid legal prohibition. Nor was attention of the learned Judges who rendered the decision in Y.Suresh Babu (1987 (2) JT(SC) 361) (supra) drawn. Hence those were decisions rendered per incuriam. We hold that an offence which law declares to be non-compoundable even with the permission of the Court cannot be compounded at all. The offence under Section 326 IPC is, admittedly, non-compoundable and hence we cannot acceded to the request of the learned counsel to permit the same to be compounded.
>
> However, considering the fact that parties have come to a settlement and the victims have no grievance now and considering the further fact that first appellant has already undergone a period of imprisonment of about six months, a lenient view can be taken and the sentence can be reduced to the period which he had already undergone. We order so and direct the jail authorities to set him at liberty forthwith."

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3. The learned Additional Public Prosecutor Mr.V.R.Balasubramanain has brought to the notice of this Court a ratio decidendi in 2002 Crl L.J.260 (Murugesan and others Vs. Ganapathy Velar) and contended that in an appeal against conviction under Section 386 of Cr.P.C., in a case were an accused was convicted under Section 323, 343, 355 and 365 of Penal Code, taking into consideration the plea of the parties viz. the accused and the victim that they have compromised subsequently and they have resolved all their differences and have come to a cordial relation, while maintaining the conviction the Honourable Apex Court has held that the sentence cane be modified to that of the period already undergone while sustaining the fine.

4. It is brought to the notice of this Court by P.W.2 that wife of the accused has deserted him and he is now suffering with three children and there is no one to look after him and if the accused is sent to prison his children will be left in the lurch without any care and their entire future will get doomed and in a magnanimous way taking into consideration the plight of the accused only he had compounded the offence with the accused and he would represent that the accused may be pardoned.

5. Taking into consideration the submissions of both the accused as well as the victim P.W.2, I am of the view that while confirming the conviction, the sentence alone can be modified to that of the period already undergone.

6. In fine, the compromise memo is recorded and the appeal is dismissed confirming the judgment of the trial Court in S.C.No.36 of 1998 on the file of the Sessions Judge, Otacamund District, with the following modification:- While sustaining the conviction, the sentence alone is modified to that of the period already undergone instead of 3 years RI and the accused is directed to set at liberty forthwith.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

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To

1.The Sessions Judge, Otacamund District.

2.The Judicial Magistrate, Otacamund District.

3. The Chief Judicial Magistrate
Coimbatore.

4.The Inspector of Police,
Serambadi Police Station,
Otacamund District.

5. The District Collector
Nilagiris at Otacammund.

6. The D.I.G of Police
Chennai- 600 004.

7.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.N. Mohideen Basha, Advocate, Sr. 27473

Crl.A.No.1083 of 2000

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